No. 11,630

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

B. SAMUELS,
Appellant,

vs.

UNITED SEAMEN'S SERVICE, INC.,
a non-profit organization,
Appellee.

APPELLEE'S PETITION FOR A REHEARING.

J. J. DOYLE,
519 California Street, San Francisco 4, California,
Attorney for Appellee and Petitioner.

Table of Authorities Cited

Cases

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To the Honorable Francis A. Garrecht, Presiding Judge, and to the Honorable Associate Judges of the United States Circuit Court of Appeals for the Ninth Circuit:

Appellee respectfully submits that its petition for a rehearing by the Honorable Circuit Court should be granted for and upon the following reasons:

I.

The Circuit Court of Appeals has assumed certain facts to be in existence and has departed from the record before the Trial Court.[1]

[1] "Speed was vital and it may be ASSUMED * * * appellee was moved by a desire to speedily provide * * *." Opinion, p. 1, Par. 3.

Footnoted matters are outright assumptions and presumptions and are clearly and definitely based on CONJECTURE and SURMISE as to WHAT THE FACTS MAY HAVE BEEN, and are ENTIRELY WITHOUT BASIS OR PREMISES IN FACT OR IN LAW.

II.

The Circuit Court of Appeals in attempting to fortify its opinion (which so patently rests on assumed facts), errs. This the District Court avoided in its opinion and findings.[2]

The Circuit Court of Appeals has based its judgment upon "conditions subsequent", viz., the extent, nature and scope in not actual but its own interpretation of problematical maritime activities since the

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Refer to testimony Rep. Tr. p. 30, lines 22-25; p. 31, lines 1-6 and to Transcript of Record pp. 52-53, also Rep. Tr. p. 31, lines 7-12, Transcript of Record, p. 57.

"The record does not tell us whether appellee anticipated the necessity of occupying the leased premises for a brief time or a long time after the shooting part of the war had ended." Opinion, p. 3, Par. 3.

Refer to testimony Rep. Tr. p. 49, lines 3-15; Transcript of Record p. 71.

"However it is a logical conclusion that in all PROBABILITY the major part * * * wartime functions would be more LIKELY to have been fulfilled six months after cessation of open and active fighting * * *." Opinion, p. 3, Par. 3.

Reference to any testimony impossible—this is the very matter that even appellee was unable to gauge or know. See hereinafter footnotes for further reference to this subject.

[2]"* * * the record is barren of any evidentiary support with respect to the 'intention of the parties' * * *." Opinion, Tr. p. 14. "That the oral, evidentiary, FACTUAL evidence with respect to the actual language employed in support of the 'intention of the parties', is of no aid to the Court in determining the legal issue involved; that its construction and interpretation is a question of law." Findings of Fact and Conclusions of Law, Tr. p. 18, Par. 4.

Missouri signing in its attempt to support its construction and interpretation of the lease contract.

This afterthought provides a fact predicate which was entirely non-existent in the Trial Court.

III.

The Circuit Court of Appeals has, by its assumption of FACTS alone, aided appellant in perpetrating an unconscionable wrong upon the United States Maritime Commission, the War Shipping Administration, United Seamen's Service, Inc., the seamen's unions and the seamen themselves; that each of said individuals and organizations, even at this very moment, is still engaged in necessary post-war merchant marine activities and problems and all the incidents thereof.[3]

The entire proceedings discloses a dearth of facts to which the Courts might allude as an aid in interpreting the lease contract as entered into between the parties. Thus both the Trial Court and the Circuit

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[3]The official records of the Board of State Harbor Commissioners of the State of California, and the Marine Exchange of the San Francisco Chamber of Commerce, disclose that in 1945, August including December, merchant marine vessels arrivals and departures totaled 2878; in 1946, January including December, total arrivals and departures totaled 5557; and in 1947, January including December, total arrivals and departures were 3834. Any six months break down of the figures will disclose a high average volume of merchant marine shipping with which appellee was vitally concerned, and appellee will provide a further break down in the hereinafter footnotes. United Seamen's Service, Inc. in conformity to agreement and understanding with the United States Maritime Commission and War Shipping Administration, agreed to and did eliminate its operations as its needs were determined by them. Its domestic operations, including San Francisco, were terminated on December 31, 1947 and its overseas operations are still in existence and functioning.

Court of Appeals must interpret the contract in the light of the language used by the parties, which language had and continues to have a recognized meaning and construction by authorities, definitional and judicial, of most respectable weight.

The Circuit Court in its opinion, p. 3, Par. 3, italicizes, by way of emphasis, "cessation" and "in". Appellee has likewise referred to Webster's New International Dictionary and the definition of "cessation" therein is as follows:

> "A ceasing or discontinuance as of action whether TEMPORARY or FINAL; a step; as of cessation of hostilities."

Appellee desires to place before the Honorable Court as to what the position of the parties would be, and of the Courts as to the construction and interpretation of the word "cessation" if the cessation were temporary. Can there be any doubt or a denial that if the cessation was temporary, that an entirely different construction and interpretation other than that now given, would be correct? Therefore, in the absence of a specification in the definition as to the contingency being solely either temporary or final, instead of the alternative who is to determine whether or not the cessation is temporary or final, and who is to improve upon Webster and eliminate from the definition, "or final"? May the Honorable Court, therefore, logically or legally measure the construction and interpretation of "cessation" by ruling that the TEMPORARY appears to be actually final—there

being no condition or event establishing a so-called open outbreak or resumption of hostilities. This Court under the definition of hostilities may not forget or overlook that any conquered or subjugated peoples are humanly of such a nature as to be unable to eliminate antagonism or enmity although it may not necessarily be apparent or open—and therefore judicially the "final" may be disregarded.

"Temporary" and "final" are obviously not synonymous, and between the "temporary" and "final" appellee was not organized to act nor serve on any "temporary" basis, but rather until its services were no longer required. For the Honorable Court to hold that under the definition of "cessation", the computation of the six months time began to run from a "temporary" cessation and to proceed to eliminate from consideration a final cessation, is to put the cart before the horse.

> "Definitional distinctions between 'cessation' and 'armistice' appear non-existent, for Webster defines an armistice as, 'a temporary cessation by mutual agreement, of hostilities'."
>
> "An armistice effects nothing but a suspension of hostilities. The war still continues. It is true that a war may end by the cessation of hostilities or by subjugation, but that is not the normal course, and *neither had hostilities ceased nor had the enemy been subjugated in the sense in which that term is used.* There were still military operations, the armistice had not been carried out, and after it was, armed forces of the United States were in occupation of enemy territory, and

were in European and Asiatic Russia, where indeed, they still remain."

Commercial v. Burleson, 255 Fed. Rep. 99-104-105.

How strikingly applicable and identical are the facts and the reasoning of Honorable Learned Hand, the District Judge in the *Commercial v. Burleson* case, to the very situation even as of this moment, to our present controversy, for it may not be denied that:

"It is true that a war may end by the cessation of hostilities * * * but that is not the normal course and neither had hostilities ceased * * * in the sense in which that term is used. There are still military operations * * * the armed forces of the United States are still in occupation of enemy territory (Japan), where indeed, they still remain."

(Paraphrasing of *Commercial* decision by Appellee.)

IV.

With respect to the foregoing legal grounds the following excerpts are referred to wherein the Circuit Court of Appeals has departed from the record without basis, justification or reason.

"Speed was vital and it may be ASSUMED * * *"

"* * * it is an EQUALLY TENABLE CONCLUSION that the parties did NOT THEN SERIOUSLY CONCERN THEMSELVES with * * *."

"It may fairly be postulated that the parties WERE NOT THINKING in terms of political or diplomatic parlance when they employed this particular language."

"The record does not tell us whether appellee anticipated the necessity of occupying the leased property for a brief time or a long time after the shooting part of the war had ended."

"However, it is a LOGICAL CONCLUSION that in all PROBABILITY the major part of the merchant marine's active, wartime functions would have been more LIKELY to have been fulfilled six months after the cessation of open and active fighting * * *."

"The record makes it apparent that appellee's local representatives were, in February, 1946, of the view that the lease term had expired * * *."

"It would have been a very simple matter to so indicate had the parties desired to make this sort of official action the decisive test."

All, excepting the last quotation from the opinion, is previously covered in this petition for rehearing, but how this Court can hold now that at the time of the lease the home office of appellee had intended that the lease should be measured by official pronouncement of a "temporary" cessation of hostilities, is beyond the comprehension of appellee. This Honorable Court is attempting to decide now what was then in the minds of appellee's New York office, and to now hold that because they relied upon the lessor, appellant's own language, that their reliance should be adversely

construed against their requirements[4] is eminently unjust.

V.

If the Circuit Court of Appeals insists on weighing what they consider the equities and to balance conveniences, which is done where there is a departure from the record, appellee sets forth for review and consideration of the Court that the original premises consisted of an old loft and, "The condition of the building when U.S.S., the defendant corporation, finally decided to lease, was 'horrible'." Transcript of Record, p. 57. The building was remodeled, refurbished and equipped by appellee in the amount of $30,000.00 to meet its requirements. This expenditure was exclusive of operating expenses and rental and definitely and solely improvements. Appellee receiving its funds from public subscription through the National War Fund, under the trust imposed by the people in the Executive Board of the Fund and the agencies involved, could not countenance the expenditure of $30,000.00 purely on a "TEMPORARY" proposition. Again repeating that the publicly announced formation, organization and receipt and use

[4]The official records of the United Seamen's Service published jointly and severally with the National War Fund, discloses that for the period from August 14, 1945 to February 14, 1946 the social attendance at its club was 64,463, and from February 15, 1946 to its close, 138,964; that as an adjunct of the club it operated a dormitory and hotel for the seamen who utilized the club facilities for purposes other than sleeping; that the official figures disclose that these operations, during the year 1946, operated at 94% of their capacity—it was not until the spring of 1947 that the attendance and use of the facilities began to gradually drop, finally to the point where termination was indicated.

of such funds was to be utilized for its purpose until it had FINALLY been determined that it was no longer required. United Seamen's Service is the counterpart of the United Service Organizations (USO), and need it be recalled that USO did not cease its operations six months from and after the cessation of hostilities in the present war with Japan, because under the same conditions of cessation and "temporary", USO was needed and did not terminate its national operations until December 31, 1947.

In reciprocity for the improvements made by appellee to appellant's premises, appellant did not avail herself of the provisions of the lease to terminate same by giving the notices required and specified in the lease, but her first step was to attempt to increase the rental from $400.00 to $1,000.00 a month.

Need it be stated that IF appellant was of the opinion that the construction and interpretation now being sought was the construction and interpretation to be applied as of the time of the negotiations and execution of the lease, or without a lease the lessor was in a position to file an unlawful detainer action in the State Court.

The complaint in the matter before this Court was not filed until July 2, 1946.

The opinion of the District Court was rendered on August 30, 1946.

Apparently some time thereafter appellant proceeded to accomplish her purpose by the proceedings disclosed by the appendix incorporated herein.

Appellee has noted the statement by the Honorable Court that no authority squarely in point has been cited or discovered. It is not unusual to be unable to cite an authority "squarely" in point. Courts frequently analyze or decide by analogy or similarity and the District Court followed good recognized legal procedure by reasoning by parity. It is most unusual, however, for Courts to decline to reason or decide by analogy, parity, or similarity.

> "Under the terms of the agreement when could he demand a lease? He was to be manager 'for a period of time, up to, and until one year after the close of the *present* war.' How was that period to be determined? 'Same to be determined when U. S. ceased to be a party *in* the war, and starts to recall and disband the troops.' It appears that defendant Emil Pokorny intended to enlist for the war, and did enlist, and the purpose of carrying on the hotel under the management of plaintiff, not only until one year after the United States ceased to be party in the war, but as well started to recall and disband the troops, is apparent.
>
> "The close of the war, standing alone, would undoubtedly mean the date when a treaty of peace would be binding on the belligerents. Now, do the added words import any shortening of that period? We must conclude that such words contemplated a possible peace to be followed by a recall and disbandment of the troops. In fact, however, just the opposite, in part, happened. Troops were recalled following the armistice and disbanded, but some troops are still in Europe, and the United States did not end the war with

Germany until the senate ratified the peace treaty on October 19, 1921, and ratifications thereof were exchanged in Berlin on November 11th, and the President of the United States proclaimed peace on November 12, 1921."

"The question of when the war closed is not a judicial one but one to be determined by the political department of the government. Conley v. Supervisors of Calhoun County, 2 W. Va. 416."

"We said in Kneeland-Bigelow Co. v. Railroad Co., 207 Mich. 546, that: 'War having been declared, that condition must be recognized by the courts as existent until the duly constituted national power of the country officially declares to the contrary, even though actual warfare has long since ceased.' "

"The parties themselves *have not* delineated or indicated in the contract the essentials necessary to enable the court to carry into execution the things to be performed. We must, therefore, hold that the plaintiff is not entitled to have specific performance of the contract."

Palmer v. Pokorny, 217 Mich. Rep. 284-288-289-292.

Reference is heretofore made in this petition that appellee would hereafter refer to the use of the word "in".

It is of interest that in the *Palmer v. Pokorny* case, supra, that in the phrase, "same to be determined when the United States ceased to be a party IN the war", the emphasis placed by the Honorable Court on the word "in" is comparable to the use of the

word "in" by the Michigan Court in the *Palmer* case. It cannot be overlooked that the Michigan Court did not attempt to construe or place any such significance in the use of the word "in" in that case in relation to this Court's observation of the word "in" in this litigation.

VI.

It is an elementary rule of interpretation announced so frequently by the Ninth Circuit Court of Appeals that it is not deemed necessary, at this time, to furnish citations, that an Appellate Court uniformly and consistently takes language of a contract without assumption of fact on its part, and views such language in the light of the events which surround the litigants in so far as such acts aid in interpreting the effect of the written word.

Does the Court now in effect take the position that the situation in the instant case is now different, or that there has been a complete termination of merchant marine activities within the language of the contract, as of the end of the six months period which would be February 14, 1946, and that therefore, the contract is concluded by its own terms?

It is a fundamental rule that the Appellate Court will accept or adhere to the interpretation of the trial Court and not substitute another of its own, though it be tenable, where conflicting inferences may be drawn from the language used.

Surely the Circuit Court does not hold that the District Court abused its discretion in construing and

interpreting the words involved as reflected in its judgment—apparently it is conceded by the Circuit Court that at least conflicting inferences may be drawn.

Appellee desires to call the Court's attention that:

> "In California the words of a contract will be taken most strongly against the party who employs them."
>
> Sec. 1654 C.C.C.

> "It would do no good to go over the arguments advanced by Flotation in support of its own interpretation of the writing. Enough to say that the arguments are not sufficiently persuasive to warrant our upsetting the interpretation given the contract by the trial court."
>
> *Flotation v. Pollia,* 136 Fed. Rep. (2d) 483-484.

It is interesting to note that Judge Matthews participated in the *Flotation* judgment.

While the *Flotation* case maintains that there was considerable evidence on a contemporary construction of the agreement between the parties themselves, and while it may be argued that there is no evidence in the instant case, and for that reason the case is not in point, this may not be conceded by appellee, as the Court in the *Flotation* case held that the California ruling required that the words of a contract be taken most strongly against the party who employed them. This rule has been made the subject of a statute—Section 1654, California Civil Code. In addition

to that the *Flotation* case cites the authority set forth in the brief by the appellee which is the leading case in the State upon the subject and has never been modified or reversed, and which is set forth at length in the brief of the appellee, *Glenn v. Bacon,* 86 Cal. App. 58-72 (3).

It is respectfully submitted that justice will be done and no harm encountered by the granting of a petition for a rehearing.

Dated, San Francisco, California,
February 9, 1948.

J. J. DOYLE,
Attorney for Appellee and Petitioner.

(Appendix Follows.)

Appendix.

THEODORE M. MONELL
Attorney at Law
Mills Building
San Francisco 4
Telephone DOuglas 5324

To UNITED SEAMEN'S SERVICE, INC.
437-9 Market Street,
San Francisco, California.

You are hereby notified that the rental for the premises occupied by you at the above address is hereby raised to the sum of one thousand (1,000.00) dollars per month, and that from and after January 13, 1947 your rental for the above premises will be the sum of one thousand (1,000.00) dollars per month, payable in advance, commencing on said January 13, 1947.

The premises above referred to are located in San Francisco and described as follows:

> All of that certain store, together with the basement thereunder, in the one and part three-story brick building, situate on the Southeasterly line of Market Street, between First and Fremont Streets, generally known as #439 Market Street. TOGETHER with the entire second and third floors of said building, the entrance thereto being generally known as #437 Market Street.

which premises you have been occupying as a tenant from month to month since the expiration of your lease covering same.

Dated, December 11, 1946.

B. Samuels, Owner,
By Theodore M. Monell,
Attorney.

THEODORE M. MONELL
Attorney at Law
Mills Building
San Francisco 4

Telephone DOuglas 5324.

January 16, 1947.

UNITED SEAMEN'S SERVICE, INC.
437-9 Market Street,
San Francisco, California.

DEMAND IS HEREBY MADE UPON YOU for payment WITHIN THREE DAYS after service upon you of this notice, of the sum of $1,167.74, being unpaid rental due from you for the premises hereinafter described, being rental in the sum of $167.74 for the period from January 1, 1947 to January 13, 1947, inclusive, at the rate of $400.00 per month, and the sum of $1,000.00 for rental for the month commencing January 13, 1947, in accordance with notice heretofore served upon you, or for possession of said premises which you have been occupying as a tenant

from month to month since the expiration of your lease covering said premises.

In the event of your nonpayment of said rental within said period of three days, you are hereby directed to surrender possession of said premises to Milton Meyer & Co., my agent, who is hereby authorized to accept such possession. In the event of your failure to deliver such possession or make said payment of said rental, action in unlawful detainer will be commenced against you to recover such possession.

The premises hereinabove referred to are located in San Francisco and described as follows:

> All of that certain store, together with the basement thereunder, in the one and part three-story brick building, situate on the Southeasterly line of Market Street, betwen First and Fremont Streets, generally known as #439 Market Street. TOGETHER with the entire second and third floors of said building, the entrance thereto being generally known as #437 Market Street.

B. Samuels, Owner,
By Theodore M. Monell,
Attorney.

and was then followed by the institution of the hereinafter set forth litigation:

THEODORE M. MONELL
1085-7 Mills Building,
San Francisco 4, California,
Telephone: DOuglas 5324.

Filed January 22, 1947,

H. A. van der Zee, Clerk,
By Jas. F. Madden, Deputy Clerk.

In the Superior Court of the State of California,
in and for the City and County
of San Francisco

No. 361632

B. Samuels,
Plaintiff,

vs.

United Seamen's Service, Inc., a non-profit organization,
Defendant.

COMPLAINT IN UNLAWFUL DETAINER

Comes now the plaintiff above named, and complaining of defendant above named for cause of action alleges the following:

I.

That at all times herein mentioned defendant above named was and now is a non-profit organization incorporated under the laws of the State of New York authorized to do and doing and transacting business

in the State of California and in the City and County of San Francisco in said State.

II.

That at all times herein mentioned plaintiff above named was and now is the owner of that certain building generally known, numbered and designated as 437-9 Market Street in San Francisco.

III.

That on or about September 15, 1943, plaintiff above named by written lease leased to said defendant above named all of that certain store, together with the basement space thereunder, generally known as 439 Market Street, together with the entire second and third floors of said building, the entrance thereto being generally known as 437 Market Street in San Francisco, being the premises hereinbefore mentioned.

That by the terms and provisions of said lease it was therein provided that the term thereof should commence on the 15th day of September, 1943, and extend for a period of six months from and after the cessation of hostilities in the present war with Japan.

IV.

That the term of said lease expired on or about six months after August 14, 1945, being on February 14, 1946 and being six months after V-J Day, at which time hostilities in the present war with Japan ceased.

V.

That in and by the terms and provisions of said lease it is therein provided that any holding over after the expiration of said term, with the consent of the lessor, should be construed to be a tenancy from month to month and should otherwise be on the terms and conditions of said lease so far as applicable.

VI.

That on or about December 11, 1946 plaintiff served upon defendant herein in San Francisco a notice increasing the rental of said premises from the sum of $400.00 per month to the sum of $1,000.00 per month, commencing on January 13, 1947.

VII.

That defendant herein has failed to pay the rental for said premises in accordance with the terms of said lease and said notice aforesaid increasing the rental, and there is now due, owing and unpaid from said defendant on account of said rental the sum of $1167.74, being the sum of $167.74 for the period from January 1, 1947 to January 13, 1947, inclusive, at the rate of $400.00 per month, and the sum of $1,000.00 for rental for the month commencing January 13, 1947.

VIII.

That on or about January 16, 1947 plaintiff herein served upon defendant herein a three-day notice demanding the payment of said sum of $1167.74 rental

due as hereinbefore alleged, or the surrender of possession of said premises within three days after service of said notice upon said defendant. That defendant herein failed and refused to pay said rental aforesaid or to surrender possession of said premises.

IX.

That by reason of the foregoing, defendant herein is unlawfully holding possession of said premises, against the will and consent of plaintiff herein, to the damage of plaintiff herein in the sum of $1167.74, being in the amount of said rental aforesaid, and at the rate of $1,000.00 per month in addition for the period commencing February 13, 1947.

X.

That it is provided in and by the terms and provisions of said lease that in case suit shall be brought for an unlawful detainer of said premises or for the recovery of any rental due under the terms of said lease, that the lessee will pay to the lessor a reasonable fee which shall be fixed by the Judge of the Court as part of the costs of such suit. That a reasonable fee to be allowed herein is the sum of $300.00.

WHEREFORE, plaintiff prays for judgment of this Court, for restitution of the premises, being all of that certain store, together with the basement thereunder, and the one and part three-story brick building generally known as 437-9 Market Street, together with the entire second and third floors of said building, and for damages in the sum of $1167.74 as

hereinbefore alleged, and for additional damages at the rate of $1,000.00 per month for the period during which said defendant may remain in possession of said premises, and for attorney's fees in the sum of $300.00, and for her costs of suit herein incurred, and for such other and further relief as may be meet and proper in the premises.

Theodore M. Monell,
Attorney for Plaintiff.

State of California,
City and County of San Francisco.—ss.

B. SAMUELS, being first duly sworn, deposes and says:

That she is the plaintiff named in the foregoing complaint; that she has read said complaint and knows the contents thereof, and that the same is true of her knowledge, excepting as to the matters therein stated on information or belief, and as to those matters she believes it to be true.

B. Samuels.

Subscribed and sworn to before me this 22nd day of January, 1947.

(SEAL) Dorothy H. McLennan,
Notary Public in and for the City and County of San Francisco, State of California.

The annexed instrument is a correct copy of the original on file in my office.

Attest: Certified January 28, 1948.

Martin Mongan, County Clerk of San Francisco, and ex-officio clerk of the Superior Court of State of California, in and for the City and County of San Francisco,

By T. J. Duffy, Deputy.

It is submitted that appellant's actions as evidenced by the two notices and the complaint in unlawful detainer, in the State Court, do not support her position that "plaintiff and defendant intended."

Defendant in the State Court, by appropriate action, moved to stay the proceedings and the hereinafter order staying proceedings made, filed and entered.

J. J. Doyle,
519 California Street,
San Francisco 4, California,
GArfield 3468,
Attorney for Defendant.

Filed April 22, 1947,
Robert Munson, Clerk,
By J. L. Perusio, Deputy Clerk.

The annexed instrument is a correct copy of the original on file in my office.

Attest: Certified January 28, 1948.
Martin Mongan, County Clerk of San Francisco, and ex-Officio Clerk of the Superior Court of the State of California, in and for the City and County of San Francisco.
By T. J. Duffy, Deputy.

In the Superior Court of the State of California,
in and for the City and County of
San Francisco

No. 361632

B. Samuels,
Plaintiff,

vs.

United Seamen's Service, Inc., a non-profit organization,
Defendant.

ORDER STAYING PROCEEDINGS

The motion of defendant for an order staying proceedings coming on regularly to be heard and it appearing to the Court that plaintiff on the 17th day of June, 1946, filed an action, "In the Superior Court of the State of California, in and for the City and County of San Francisco", entitled, "B. Samuels, Plaintiff, vs. United Seamen's Service, Inc., a non-profit organization, Defendant", number 354446, reading, "Complaint for Declaratory Relief", and that said action was transferred to and tried "In the District Court of the United States for the Northern District of California, Southern Division" and judgment therein was, on the 23rd day of December, 1946, entered in favor of said defendant; and it further appearing that on the 22nd day of March, 1947, plaintiff filed an appeal from the said judgment to the Circuit Court of the United States for this District; and it

further appearing that in said referred to litigation and in this suit, that the parties thereto are identical and the subject matter, likewise identical involving the construction and interpretation of the words, "cessation of hostilities", and/or the duties and rights of the parties arising out of and from the construction and interpretation of said words, particularly in the present suit as this Court must necessarily first construe and interpret the legal meaning and effect of "cessation of hostilities" prior to there being any adjudication of unlawful detainer in this suit by this Court; and it further appearing that the final decision of the said Circuit Court on said judgment of necessity, will either affirm, modify or reverse the construction and interpretation of the words, "cessation of hostilities" as used in that certain lease between the parties hereto, and the judgment therein; and it further appearing that the final determination of said appeal will establish the rights of the parties thereto and herein; and

GOOD CAUSE APPEARING, it is hereby ordered that the proceedings herein be stayed pending a final decision on said appeal as to the construction, interpretation and meaning of "cessation of hostilities."

Dated this 22nd day of April, 1947.

Herbert C. Kaufman,
Judge of the Superior Court.

Certificate of Counsel.

I hereby certify that I am counsel for appellee and petitioner in the above entitled cause and that in my judgment the foregoing petition for a rehearing is well founded in point of law as well as in fact and that said petition for a rehearing is not interposed for delay.

Dated, San Francisco,
February 9, 1948.

J. J. Doyle,
Of Counsel for Appellee and Petitioner.